In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1453

NORTON Y. BEILENSON, PETITIONER

v.

TREASURER OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner, an attorney, was appointed by the United States District Court for the Eastern District of Missouri to represent an indigent state prisoner in a civil suit he filed under 42 U.S.C. 1983 for damages based on the prisoner's claim of an alleged beating in a St. Louis jail. In that action, the jury held for the defendant. After trial, petitioner renewed his pre-trial motion for an attorney's fee and to make the Treasurer of the United States a party.[1] The district court denied the motion, and the court of appeals affirmed (Pet. App. A).

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[1] The title of this case is misleading, since this an appeal from an order issued in *Tyler* v. *Warden Lark, et al.*, No. 70C 588(1) (E.D. Mo.), affirmed, No. 72-1271 (C.A. 8), which denied petitioner's motion to make the Treasurer of the United States a party. We do not concede, by our appearance below and in this Court,

The courts below did not abuse their discretion in denying petitioner's motion for an attorney's fee, and further review is unwarranted. For the reasons set forth in the court of appeals' opinion (Pet. App. A), upon which we rely, there is no statutory or constitutional right to an attorney's fee in this case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1973.

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that the Treasurer is a proper party. See F. R. Civ. P., Rule 12(b); *Orange Theatre Corp.* v. *Rayhersiz Amusement Corp.*, 139 F. 2d 871 (C.A. 3), certiorari denied, 322 U.S. 740.

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